

PATENT

#13
DHC
MSFTP362US



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Date:

4/7/03

Heather Holmes

Heather Holmes

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Applicant: Matthew Conway, *et al.*

Examiner: Tadesse Hailu

Serial No: 09/335,640

Art Unit: 2173

Filing Date: June 18, 1999

Title: METHODS, APPARATUS AND DATA STRUCTURES FOR PROVIDING A USER INTERFACE TO OBJECTS, THE USER INTERFACE EXPLOITING SPATIAL MEMORY AND VISUALLY INDICATING AT LEAST ONE OBJECT PARAMETER

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Assistant Commissioner for Patents

U.S. Patent and Trademark Office

Washington, D.C. 20231

**PETITION TO REVIVE FOR UNINTENTIONAL DELAY UNDER 37 C.F.R. §1.137(b) AND
REQUEST FOR WAIVER OF FEE UNDER 37 C.F.R. §1.17(M)/
NOTICE OF APPEAL**

Dear Sir:

A Notice of Appeal is being filed concurrently herewith.

The above-identified application became abandoned for failure to timely reply to a Final Office Action dated May 28, 2002. Applicant, through its undersigned representative, hereby requests revival of the subject application and waiver of the petition fee for the following reasons.

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Applicants' representative received a Final Office Action dated May 28, 2002, which set a 3-month Shortened Statutory Period for Reply. Applicants' representative submitted a timely Reply to said Final Office Action *via* facsimile on August 12, 2002 and retained the fax receipt. Having received no further correspondence from Examiner Hailu, applicants' representative telephoned the Examiner on November 5, 2002. The Examiner informed applicants' representative that the Reply to the Final Office Action had not been received. In response, on November 5, 2003, applicants' representative faxed a copy of the Reply, along with a copy of the fax receipt evincing timely submission of the Reply.

Applicant's representative telephoned Examiner Hailu on November 25, 2002 to further inquire about the status of the Reply to the Final Office Action and was informed by the Examiner that there was no need to worry about the application going abandoned because he was issuing a new Office Action.

On January 3, 2003, to follow-up with the Examiner regarding the status of the application, applicants' representative tried repeatedly to reach the Examiner via telephone without success. Accordingly, applicants' representative contacted and conducted a telephonic interview with the Examiner's supervisor (John W. Cabeca), who informed applicants' representative that Examiner Hailu was out of the Office for several weeks, and that an Advisory Action was mailed on November 27, 2002. Applicants' representative informed Examiner Cabeca that the Advisory Action was never received and requested a courtesy copy thereof. Examiner Cabeca faxed a copy of the Advisory Action to applicants' representative on January 3rd, 2003. A Notice of Abandonment was mailed January 13, 2003.

In light of the above, applicants' representative submits that all reasonable attempts were made to determine the status of the application and prevent such from going abandoned, and that applicants' representative was under the impression that the case would not go abandoned based on intimations by the Examiner on November 25, 2003 during a teleconference with Ms. Heather Holmes (secretary to applicants' undersigned representative). A copy of an e-mail chain documenting the above is attached.

In view of at least the above, it is respectfully requested that the fee for the Petition to Revive be waived. Since the above-identified utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

Applicants' representative respectfully submits that the entire delay in filing the required reply, from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR § 1.137(b), was unintentional.

In the event that waiver of the petition fee is not granted, the Commissioner is authorized to charge the revival fee in accordance with 37 C.F.R. §1.17(m), to Deposit Account No. 50-1063, Order No. MSFTP362US.

If any additional fees are required in connection with this document, the Commissioner is authorized to charge them to the above-noted Deposit Account number.

Respectfully submitted,
AMIN & TUROCY, LLP



Himanshu S. Amin
Reg. No. 40,894

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Himanshu Amin

From: Heather Holmes
Sent: Tuesday, November 26, 2002 2:25 PM
To: Himanshu Amin
Cc: Heather Holmes; Kelly Jenkins
Subject: RE: MSFTP362 - Abandonment Date: November 28, 2002



I already called him (spoke to him yesterday) and he said an OA was issued and we should be receiving it shortly. He said he called and spoke with you a few weeks ago to let you know he received the Reply to the Final OA and that he would be sending out another Action.

-----Original Message-----

From: Himanshu Amin
Sent: Tuesday, November 26, 2002 2:23 PM
To: Heather Holmes; Kelly Jenkins
Subject: FW: MSFTP362 - Abandonment Date: November 28, 2002
Importance: High

Please call the Examiner TODAY and see what is going on with this case.

Let him know that he needs to respond to avoid the case going abandoned

-----Original Message-----

From: Jeff Sadlowski
Sent: Tuesday, November 26, 2002 1:23 PM
To: Himanshu Amin
Subject: FW: MSFTP362 - Abandonment Date: November 28, 2002
Importance: High

Ham:

I'm sure heather has already checked with you regarding this case, but just want to make sure this date doesn't slip. Is there any assistance you need regarding this matter?

Thanks,
Jeff 11/26

-----Original Message-----

From: Heather Holmes
Sent: Wednesday, November 13, 2002 5:18 PM
To: Jeff Sadlowski
Subject: RE: MSFTP362 - Abandonment Date: November 28, 2002

Yes, and I called the examiner to confirm that he received our faxed reply and he did. I have a reminder to follow-up tomorrow as a matter of fact. :)

-----Original Message-----

From: Jeff Sadlowski
Sent: Wednesday, November 13, 2002 5:16 PM
To: Heather Holmes
Cc: Himanshu Amin
Subject: FW: MSFTP362 - Abandonment Date: November 28, 2002

I'm going to presume that you are watching this abandonment date of 11/28.

Thanks,
Jeff 11/13

-----Original Message-----

From: Himanshu Amin
Sent: Tuesday, November 05, 2002 12:50 PM
To: Heather Holmes
Cc: Kelly Jenkins; Jeff Sadlowski; Himanshu Amin; Valerie Salvino

Subject: RE: MSFTP362 - Abandonment Date: November 28, 2002

The Examiner called back and he never received the Reply we filed.

Please prepare a cover letter with the following set up to be faxed to 703-746-7238 (please confirm this is a correct number).

Further to the teleconference with the Examiner today (November 5, 2002), applicants' representative submitted via facsimile a Reply to Final Office Action on _____ in connection with the subject application. Attached herewith is a copy of the submitted Reply along with a copy of the fax receipt.

APR 14 2003

-----Original Message-----

From: Himanshu Amin
Sent: Tuesday, November 05, 2002 11:03 AM
To: Heather Holmes; Valerie Salvino
Cc: Kelly Jenkins; Jeff Sadlowski; Himanshu Amin
Subject: MSFTP362 - Abandonment Date: November 28, 2002

> I left a voicemail with Examiner Hallese (sp) inquiring about
> the status of his
> replying to the Reply to Final we fax filed on August 12,
> 2002. Please follow-up with
> him tomorrow if we do not hear from him today.

> Please closely monitor this case - we do not want it to go
> abandoned on November 28, 2002.

> Thanks,
> Ham

> Himanshu S. Amin
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> 24th Floor, National City Center
> 1900 East 9th Street
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> *****

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> original message immediately.

> Thank you.

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